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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,929	07/26/2001	Chris A. Barton	NAI1P014/01.128.01	8771
28875	7590	07/06/2005	EXAMINER	
Zilka-Kotab, PC P.O. BOX 721120 SAN JOSE, CA 95172-1120			SCHUBERT, KEVIN R	
			ART UNIT	PAPER NUMBER

2137

DATE MAILED: 07/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/916,929

Applicant(s)

BARTON ET AL.

Examiner

Kevin Schubert

Art Unit

2137

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 June 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

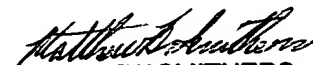
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). 04132005
13. ☐ Other: _____.


MATTHEW SMITHERS
PRIMARY EXAMINER
Art Unit 2137

RD

Continuation of 11. does NOT place the application in condition for allowance because:

The IDS filed 4/13/05 is in proper form and has been considered.

The affidavit submitted 6/22/05 fails to overcome the 102(e) rejection under Grupe because the affidavit has not been seasonably presented (see MPEP 715.09).

Regarding claim 1, the applicant argues that Grupe does not disclose executing additional logic utilizing the cpu while waiting for results from the scanning co-processor because the source computer cannot take any action until it receives the log file from the scanning computer. The examiner disagrees. This conclusion is inconsistent with Grupe. The point of Grupe is to send data to be scanned from a source computer to a scanning co-processor in order to free up the source computer [0009]. If the source computer were in shut down mode and could not take any action until a log file was received back as suggested by applicant, the invention would be futile. There would be no reason to outsource a virus scan since the scan could be done in the same amount of time on the source computer without wasting transmission time and processing. Moreover, Grupe discloses that a log file is only sent back when malicious code is identified. Thus, according to the applicant's conclusion, the source computer would be sent into an eternal shut down mode everytime malicious code was not found by the scanning co-processor.

The applicant also argues Grupe does not disclose that the scanning co-processor is under the control of the cpu via the execution of the scanning control logic by the cpu. The examiner disagrees. The cpu of the source computer orchestrates network virus scanning in the system by sending virus data to the scanning co-processor(s) which causes the scanning control logic on the scanning co-processor(s) to execute. Thus, execution of the scanning control logic takes place by an action of the cpu. This meets the applicant's limitation.

The applicant also argues Grupe does not disclose that additional data to be scanned is queued while waiting for the results from the scanning co-processor. Grupe discloses that a plurality of files, such as emails, are sent in bulk to a scanning co-processor which scans each and every file for such things as banned words [0028] and that the more files that are sent the longer the period of time to scan the files. In this process one email is scanned while other emails wait, or are queued, for scanning.

Regarding claim 34, the applicant argues that Grupe does not disclose processing the data utilizing the cpu until receipt of favorable results from the scanning co-processor including a situation where malicious code is not detected. Grupe discloses that a log file is sent back indicating malicious files. Files in the log file are deleted or quarantined. Files not in the log file are processed as normal data and considered to be virus free.

Regarding claim 12, Grupe discloses that viruses are detected by comparing the viruses to stored virus definition profiles [0028].

Regarding claim 38, the criteria used to detect a virus is set by the user. For example, the user may want to ban a particular game. The criteria for analyzing the files is then set to relate to the particular game to be banned [0036].